

Golden Gate University Law Review

Volume 41

Issue 3 *Ninth Circuit Survey*

Article 6

May 2011

Gebhart v. Gaughan: Clarifying the Homestead Exemption as to Post-Petition Appreciation

Natalie R. Barker

Follow this and additional works at: <http://digitalcommons.law.ggu.edu/ggulrev>



Part of the [Bankruptcy Law Commons](#)

Recommended Citation

Natalie R. Barker, *Gebhart v. Gaughan: Clarifying the Homestead Exemption as to Post-Petition Appreciation*, 41 Golden Gate U. L. Rev. (2011).
<http://digitalcommons.law.ggu.edu/ggulrev/vol41/iss3/6>

This Case Summary is brought to you for free and open access by the Academic Journals at GGU Law Digital Commons. It has been accepted for inclusion in Golden Gate University Law Review by an authorized administrator of GGU Law Digital Commons. For more information, please contact jfischer@ggu.edu.

CASE SUMMARY

GEBHART v. GAUGHAN: CLARIFYING THE HOMESTEAD EXEMPTION AS TO POST-PETITION APPRECIATION

INTRODUCTION

Filing for bankruptcy is becoming increasingly popular for debtors looking for a “fresh start” in their financial affairs. In fact, the Administrative Office of the Courts reported over a million Chapter 7 bankruptcy petitions filed in the 2010 fiscal year, up nearly sixteen percent from the 2009 fiscal year.¹ Chapter 7 bankruptcy, commonly known as “liquidation” bankruptcy, is a powerful remedy for an individual debtor because it releases the debtor from personal liability for certain debts and prohibits creditors from taking action to collect dischargeable debts.²

A bankruptcy case is commenced on the date the debtor files his or her petition.³ Among other things, the debtor must include in the petition a list of his or her assets, debts, and the specific exemptions being claimed.⁴ Once the petition is filed, all of the debtor’s legal and

¹ Administrative Office of the U.S. Courts, *Bankruptcy Filings Up Nearly 14 Percent over Last Fiscal Year*, U.S. COURTS (Nov. 8, 2010), http://www.uscourts.gov/News/NewsView/10-11-08/Bankruptcy_Filings_Up_Nearly_14_Percent_over_Last_Fiscal_Year.aspx?CntPageID=1 (“Chapter 7 filings in FY 2010 totaled 1,146,511, up 15.9 percent from the 989,227 chapter 7 filings in FY 2009.”).

² Administrative Office of the U.S. Courts, *Liquidation Under the Bankruptcy Code*, U.S. COURTS <http://www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyBasics/Chapter7.aspx> (last visited Apr. 5, 2011).

³ *Id.*

⁴ *Id.*

376 GOLDEN GATE UNIVERSITY LAW REVIEW [Vol. 41]

equitable property interests become property of the bankruptcy estate.⁵ To oversee the administrative process, the court appoints a trustee to serve as a representative of the bankruptcy estate.⁶ Section 704 of the Bankruptcy Code lays out the duties of the trustee, which include investigating the financial affairs of the debtor and reducing the property of the estate to cash in order to distribute the proceeds to creditors.⁷

Although most of a debtor's property belongs to the bankruptcy estate, the Bankruptcy Code allows the debtor to keep certain "exempt property" pursuant to section 522.⁸ Under section 522, the debtor generally will have the option to choose between the federal bankruptcy scheme of exemptions or state-law exemptions of the state in which the debtor is domiciled.⁹ However, each state has the choice to opt out of federal bankruptcy exemptions, causing the debtor to be reliant solely on the exemptions provided by the state.¹⁰ Unless a party in interest such as a creditor or trustee objects to an exemption claimed by the debtor, the property is deemed exempt.¹¹ Pursuant to the Federal Rules of Bankruptcy Procedure, Rule 4003(b), a trustee ordinarily has only 30 days after the meeting of creditors to contest a claimed exemption or the right to include the exempt property in the bankruptcy estate is lost.¹² This is true even in an instance "where the debtor has no colorable basis for claiming the exemption."¹³ However, in the United States Supreme Court's recent decision in *Schwab v. Reilly*, the Court held that a trustee's failure to object did not prevent the trustee from forcing a sale of property that was worth more than the claimed exemption amount.¹⁴

Nevertheless, *Reilly* left open the question whether a debtor should be allowed to retain any post-petition increase in the fair market value of the debtor's residence if the debtor's equity interest in the property at the time of filing was below the allowable exemption amount.¹⁵ Recently, the Ninth Circuit addressed this very issue in *Gebhart v. Gaughan*, a case

⁵ 11 U.S.C.A. § 541(a)(1) (Westlaw 2011).

⁶ 11 U.S.C.A. § 323(a) (Westlaw 2011).

⁷ 11 U.S.C.A. § 704(a) (Westlaw 2011); 13A-CS23 COLLIER CONSUMER BANKRUPTCY FORMS § CS23.21.

⁸ 11 U.S.C.A. § 522 (Westlaw 2011).

⁹ 11 U.S.C.A. § 522(b) (Westlaw 2011).

¹⁰ *Klein v. Chappell (In re Chappell)*, 373 B.R. 73, 77 (B.A.P. 9th Cir. 2007) (citing 11 U.S.C. § 522(b)(1)).

¹¹ 11 U.S.C.A. § 522(b)(1) (Westlaw 2011).

¹² FED. R. BANKR. P. 4003(b).

¹³ *Chappell*, 373 B.R. at 77 (citing *Taylor v. Freeland & Kronz*, 503 U.S. 638 (1992)).

¹⁴ *Schwab v. Reilly*, 130 S. Ct. 2652 (2010).

¹⁵ *Id.* at 2668 n.21

2011]

GEBHART v. GAUGHAN

377

that involved consolidated appeals.¹⁶ In *Gebhart*, the value of the debtors' equity interest in their homes at the time of filing of each case was less than the amount allowed under the homestead exemption.¹⁷ However, in each case the value of the property increased substantially after the date the petition was filed.¹⁸ Ultimately, the Ninth Circuit held that since the particular homestead exemptions involved in *Gebhart* exempted only specific dollar amounts and not the entire properties, each trustee was entitled to force a sale of the homestead property to collect the increased post-petition value in the property despite the trustee's failure to object to the exemption within the 30-day time period prescribed by Rule 4003(b).¹⁹

This case summary begins by discussing the facts and procedural history of the two consolidated appeals in *Gebhart*. Next, it outlines and reviews the analysis of the Ninth Circuit. Lastly, it concludes by briefly discussing the implications of the Ninth Circuit's decision in *Gebhart*.

I. FACTS AND PROCEDURAL HISTORY

The Ninth Circuit's decision in *Gebhart v. Gaughan* was the result of consolidated appeals in two bankruptcy cases involving the question whether a trustee has a valid interest in the post-petition increases to a homestead property's fair market value.²⁰ While in the first case the debtor claimed a homestead exemption under Arizona's statutory exemption laws, the second case applied the federal system of exemptions.²¹ In neither case did the trustee object to the claimed exemption amount filed by the debtor(s) within the 30-day time limit set by Rule 4003(b).²²

A. THE GEBHART BANKRUPTCY

In an effort to obtain financial relief from his debts, Arizona resident Nikalous Gebhart filed for Chapter 7 bankruptcy on August 8, 2003.²³ In Schedule C²⁴ of his bankruptcy petition, Gebhart claimed a

¹⁶ *Gebhart v. Gaughan (In re Gebhart)*, 621 F.3d 1206 (9th Cir. 2010).

¹⁷ *Id.* at 1208.

¹⁸ *Id.*

¹⁹ *Id.* at 1210.

²⁰ *Id.* at 1208.

²¹ *Id.*

²² *Id.* at 1208-09.

²³ *Id.* at 1208.

²⁴ In a Chapter 7 bankruptcy petition, a debtor is required to include all the exemptions he or she is claiming under Schedule C of the petition.

378 GOLDEN GATE UNIVERSITY LAW REVIEW [Vol. 41]

homestead exemption in the amount of \$89,703 for his residence located in Phoenix, Arizona.²⁵ This value was determined by the difference, as of the filing date, between the fair market value of the property (\$210,000) and the mortgages encumbering the property (\$120,297).²⁶

After receiving his discharge on December 12, 2003, Gebhart continued to live in his Phoenix home.²⁷ Under the impression that his home was now exempt from the bankruptcy estate, Gebhart decided to refinance his home.²⁸ The mortgage lender also believed that the property was free and clear of any claims by the trustee of the bankruptcy estate.²⁹ However, almost three years after the discharge of Gebhart's debts, the trustee asked the bankruptcy court for approval to sell Gebhart's home to recover the excess equity in the property for the benefit of the creditors on the grounds that the property's fair market value had substantially increased subsequent to Gebhart's filing of the petition.³⁰

In his response, Gebhart asked the bankruptcy court to order the trustee to abandon the property, based on the theory that the property was now valueless to the bankruptcy estate.³¹ In asserting that the homestead property was valueless, Gebhart argued that for bankruptcy purposes, the fair market value of the property is locked in at the time the bankruptcy petition is filed.³² In holding for the trustee, the bankruptcy court allowed the trustee to force the sale of Gebhart's residence.³³ Gebhart appealed to the district court, which affirmed the ruling of the bankruptcy court.³⁴ Gebhart then appealed to the Ninth Circuit.³⁵

B. THE CHAPPELL BANKRUPTCY

On June 30, 2004 Steven and Julie Chappell filed a joint Chapter 7 bankruptcy petition in the state of Washington, which—unlike Arizona—allows debtors to use the federal exemption system.³⁶ When a couple files a joint petition, they are allowed to double the amount of

²⁵ *Gebhart*, 621 F.3d at 1208.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* at 1208-09.

³² *Id.* at 1209.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

2011]

GEBHART v. GAUGHAN

379

their exemptions.³⁷ Thus, pursuant to 11 U.S.C. § 522(d)(1), the Chappells claimed a homestead exemption in the amount of \$21,511.25, which was the difference between the fair market value of the property (\$350,000) and the liens encumbering the property (\$328,488.75).³⁸

Similar to Gebhart, the Chappells continued living in their home after receiving a bankruptcy discharge on October 21, 2004.³⁹ However, during the two years following their discharge, the Chappells were unable to keep up with their mortgage payments and defaulted.⁴⁰ The mortgage lender then sought relief from the automatic stay in an effort to foreclose on the property.⁴¹ In response, the trustee of the bankruptcy estate asked the court's permission to sell the homestead property, as he believed the fair market value of the property had increased by \$200,000 from the date the petition was filed.⁴²

Ruling in favor of the Chappells, the bankruptcy court held that the homestead property was no longer in reach of the trustee, because it had been transferred entirely out of the bankruptcy estate at the time the Chappells claimed their exemption in the property, and the trustee had failed to object within the 30-day time period under Rule 4003(b).⁴³ The bankruptcy court further held that the value of the exempt property was determined at the time the petition was filed, thus no value remained in the homestead property.⁴⁴ The trustee subsequently appealed to the bankruptcy appellate panel (BAP), which reversed the bankruptcy court's decision and held in favor of the trustee.⁴⁵ The Chappells then appealed to the Ninth Circuit, and their appeal was consolidated with Gebhart's appeal.⁴⁶

II. THE NINTH CIRCUIT'S ANALYSIS

The Ninth Circuit reviews a district court's decision to affirm a bankruptcy court's conclusions of law de novo, and all factual findings by the bankruptcy court are reviewed for clear error.⁴⁷ This same

³⁷ *Id.*; 11 U.S.C.A. § 522(m) (Westlaw 2011) (providing that the value of an exemption "shall apply separately with respect to each debtor in a joint case").

³⁸ *Klein v. Chappell (In re Chappell)*, 373 B.R. 73, 75 (B.A.P. 9th Cir. 2007).

³⁹ *Gebhart*, 621 F.3d at 1209.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*; *Chappell*, 373 B.R. at 75.

⁴³ *Gebhart*, 621 F.3d at 1209.

⁴⁴ *Chappell*, 373 B.R. at 76.

⁴⁵ *Gebhart*, 621 F.3d at 1209.

⁴⁶ *Id.*

⁴⁷ *Id.* (citing *Abele v. Modern Fin. Plans Servs., Inc. (In re Cohen)*, 300 F.3d 1097, 1101 (9th

380 GOLDEN GATE UNIVERSITY LAW REVIEW [Vol. 41]

standard of review is used by the Ninth Circuit when reviewing the BAP's decision to reverse a bankruptcy court's decision.⁴⁸ To determine whether a trustee is allowed to force a sale of a debtor's home on the basis that the property's fair market value increased post-petition, the Ninth Circuit panel in *Gebhart* spent the majority of its analysis on the issue of whether a debtor's entire homestead property is removed from the bankruptcy estate as the result of a trustee's failure to object to a debtor's claimed homestead exemption within the 30-day period prescribed by Rule 4003(b).⁴⁹ The Ninth Circuit also addressed the issue of whether the value of the homestead property freezes, for bankruptcy purposes, at the time the debtor files the bankruptcy petition.⁵⁰ While ruling for the trustees on both issues, the Ninth Circuit left open the possibility that estoppel may work as a potential remedy for debtors in future bankruptcy cases.⁵¹

A. TRUSTEE'S FAILURE TO OBJECT DOES NOT REMOVE ENTIRE
PROPERTY FROM THE BANKRUPTCY ESTATE

Writing for the Ninth Circuit panel, Circuit Judge Tashima noted that the central issue was whether a bankruptcy trustee's failure to timely object to a claimed homestead exemption effectively removes the entire property from the bankruptcy estate.⁵² Under Rule 4003(b), a bankruptcy trustee has 30 days after the meeting of creditors to object to a debtor's claimed exemption.⁵³ If an objection is not made within this time period, the trustee waives the right to object to the claimed exemption in the future.⁵⁴

The Ninth Circuit agreed with the United States Supreme Court's ruling in *Taylor v. Freeland & Kronz* that a trustee is barred from contesting the validity of a debtor's claimed exemption after the 30-day time period has passed, even if the debtor has no good-faith claim to the

Cir. 2002)).

⁴⁸ *Id.* (citing *Sigma Micro Corp v. Healthcentral.com (In re Healthcentral.com)*, 504 F.3d 775, 783 (9th Cir. 2007)).

⁴⁹ *Id.* at 1209.

⁵⁰ *Id.* at 1211.

⁵¹ *Id.* at 1212.

⁵² *Id.* at 1209.

⁵³ FED. R. BANKR. P. 4003(b)(1) (providing "a party in interest may file an objection to the list of property claimed as exempt within 30 days after the conclusion of the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed" unless court "extend[s] the time for filing objections").

⁵⁴ FED. R. BANKR. P. 4003(b)(1).

exemption.⁵⁵ The court of appeals further noted several other cases that held that once a debtor's property is deemed exempt, it is no longer included in the bankruptcy estate; rather, it reverts in the debtor.⁵⁶ The Ninth Circuit acknowledged that this conclusion is supported by language in the Bankruptcy Code that characterizes exempt property as belonging to the debtor and thus outside of the bankruptcy estate.⁵⁷ However, the Ninth Circuit did not stop its analysis there; the court went on to discuss the recent holding of the United States Supreme Court in *Schwab v. Reilly* as it relates to the issue presented in *Gebhart*.⁵⁸

In *Reilly*, the Supreme Court clarified its ruling in *Taylor* by stating that the value of the debtor's property interest in a claimed exemption is limited to the specific dollar amount allowable under that particular exemption.⁵⁹ In summarizing the Supreme Court's holding in *Reilly*, Judge Tashima stated that "[e]ven when a debtor claims an exemption in an amount that is equal to the full value of the property as stated in the petition and the trustee fails to object, the asset itself remains in the estate, at least if its value at the time of filing is in fact higher than the exemption amount."⁶⁰ Thus, all that is transferred out of the bankruptcy estate is the specific dollar value of the debtor's claimed exemption, rather than the property itself.⁶¹

Gebhart argued that the Supreme Court's decision in *Reilly* applied only to the federal bankruptcy exemption scheme and therefore was inapplicable to his case since Arizona is one of the states that have opted out of the federal bankruptcy exemption system.⁶² In making this argument, Gebhart relied on a 1983 case from the Arizona Court of Appeals that stated that Arizona's homestead exemption allowed the debtor's entire property to be removed from the bankruptcy estate, rather than the specific dollar value of the debtor's claimed exemption at the time of filing.⁶³ However, the Ninth Circuit immediately rejected Gebhart's argument, noting that the case Gebhart had relied upon was "decided based on an earlier version of the Arizona homestead statute, which exempted 'real property' whereas the current version of the statute

⁵⁵ *Gebhart*, 621 F.3d at 1209; see *Taylor v. Freeland & Kronz*, 503 U.S. 638 (1992).

⁵⁶ *Gebhart*, 621 F.3d at 1210 (citing *Owen v. Owen*, 500 U.S. 305, 308 (1991); *Smith v. Kennedy (In re Smith)*, 235 F.3d 472, 478 (9th Cir. 2000); *Bell v. Bell (In re Bell)*, 225 F.3d 203, 216 (2d Cir. 2000)).

⁵⁷ *Gebhart*, 621 F.3d at 1210; see 11 U.S.C.A. § 522(b)(1) (Westlaw 2011).

⁵⁸ *Gebhart*, 621 F.3d at 1210; *Schwab v. Reilly*, 130 S. Ct. 2652 (2010).

⁵⁹ *Reilly*, 130 S. Ct. 2652.

⁶⁰ *Gebhart*, 621 F.3d at 1210 (citing *Reilly*, 130 S. Ct. at 2661-62, 2666).

⁶¹ *Id.*

⁶² *Id.* at 1210 n.5.

⁶³ *Id.*; *Evans v. Young*, 661 P.2d 1148 (Ariz. Ct. App. 1983).

382 GOLDEN GATE UNIVERSITY LAW REVIEW [Vol. 41]

exempts an ‘*interest in real property*.’”⁶⁴ Therefore, the Ninth Circuit concluded that since Arizona’s homestead exemption is similar to the federal exemption statute in that they both limit the specific dollar amount a debtor may claim under the homestead exemption, the Supreme Court’s interpretation in *Reilly* applies to all exemption statutes that provide a dollar-value limit, including Arizona’s homestead exemption.⁶⁵

The Ninth Circuit did recognize that the Supreme Court in *Reilly* left open the question whether an entire property can be transferred to the debtor when at the time of filing, the full fair market value of the property is equal to or lesser than the maximum dollar amount allowed for the exemption.⁶⁶ However, the Ninth Circuit never reached this question since in *Gebhart* the value of the debtors’ claimed homestead exemptions did not represent the full value of their properties—and only their equity interests in the properties were claimed as exempt.⁶⁷ Thus, this issue remains open.

The Ninth Circuit identified the factual differences between *Reilly* and *Gebhart*, noting that in *Reilly* “the debtor underestimated the value of the exempt property at the time of filing,” while in *Gebhart* “the debtors accurately valued the equity interests in their homestead properties at the time of filing, but the fair market values of the properties increased subsequent to filing.”⁶⁸ However, the court did not find the differences significant enough to change its analysis of the issue.⁶⁹ Therefore, since the Supreme Court held in *Reilly* that the debtor’s interest in the property is limited to the dollar value of the claimed exemption, the Ninth Circuit concluded that “any additional value in the property remains the property of the estate, regardless of whether the extra value was present at the time of filing or whether the property increased in value after filing.”⁷⁰ However, the court explained its interpretation of *Reilly* may be limited to circumstances where the fair market value of the property—and not just the debtor’s equity interest in the property—is greater than the maximum exemption amount a debtor is allowed to claim.⁷¹

⁶⁴ *Gebhart*, 621 F.3d at 1210 n.5 (citing ARIZ. REV. STAT. § 33-1101(A); other citation omitted).

⁶⁵ *Id.*

⁶⁶ *Id.* at 1210 n.4 (citing *Schwab v. Reilly*, 130 S. Ct. at 2668 n.21).

⁶⁷ *Id.*

⁶⁸ *Id.* at 1211.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

2011]

GEBHART v. GAUGHAN

383

**B. FAIR MARKET VALUE OF THE HOMESTEAD PROPERTY DOES NOT
“FREEZE” AT THE TIME THE BANKRUPTCY PETITION IS FILED**

The debtors argued that the trustees no longer had valid claims to their properties, since the fair market value of their properties had effectively been frozen at the time of filing the petitions, and any conclusion to the contrary would be inconsistent with section 522(a)(2) of the Bankruptcy Code.⁷² Section 522(a)(2) states that “‘value’ [of property sought to be exempt] means fair market value as of the date of the filing of the petition or, with respect to property that becomes property of the estate after such date, as of the date such property becomes property of the estate.”⁷³ The Ninth Circuit rejected the debtors’ interpretation of section 522(a)(2), noting that it was inconsistent with prior Ninth Circuit decisions, which had interpreted the statute as freezing the value of the debtor’s claimed exemption at the date the petition is filed, rather than freezing the fair market value of the property.⁷⁴

Additionally, the Ninth Circuit noted past cases that had held that the bankruptcy estate is entitled to post-petition increases in the value of property even when a portion of the property is otherwise exempt.⁷⁵ Here, the Ninth Circuit reasoned that even though the prior cases dealt with California’s scheme of exemptions, the holdings were applicable to the present case since the Supreme Court reaffirmed that these fundamental principles applied to all exemption statutes that limit the dollar value of property claimed as an exemption.⁷⁶ Furthermore, the decisions of these past cases were based not only on state law, but also on section 541(a)(6) of the Bankruptcy Code, which states that “[p]roceeds, product, offspring, rents, or profits of or from property of the estate” is included as property of the estate.⁷⁷

C. THEORY OF ESTOPPEL AS A POTENTIAL REMEDY

As a final argument, Gebhart asserted that even if the property is deemed to be property of the bankruptcy estate, the trustee should be

⁷² *Id.*

⁷³ *Id.* (quoting 11 U.S.C. § 522(a)(2)).

⁷⁴ *Id.*; see *Hyman v. Plotkin* (*In re Hyman*), 967 F.2d 1316, 1320 n.9 (9th Cir. 1992).

⁷⁵ *Gebhart*, 621 F.3d at 1211; see *Alsberg v. Robertson* (*In re Alsberg*), 68 F.3d 312, 314-15 (9th Cir. 1995); see also *Hyman*, 967 F.2d at 1321; *Schwaber v. Reed* (*In re Reed*), 940 F.2d 1317, 1323 (9th Cir. 1991); *Viet Vu v. Kendall* (*In re Viet Vu*), 245 B.R. 644, 647-48 (B.A.P. 9th Cir. 2000).

⁷⁶ *Gebhart*, 621 F.3d at 1211.

⁷⁷ *Id.*; see 11 U.S.C. § 541(a)(6); see also *Reed*, 940 F.2d at 1323; *Viet Vu*, 245 B.R. at 649.

384 GOLDEN GATE UNIVERSITY LAW REVIEW [Vol. 41]

estopped from forcing a sale of the property since the Trustee deliberately left the bankruptcy case open longer than necessary.⁷⁸ However, the Ninth Circuit found it unnecessary to decide whether estoppel might be available as a remedy in a bankruptcy proceeding, because in any event Gebhart would not have been able to establish the elements required for estoppel to apply.⁷⁹ Thus, the Ninth Circuit left open the possibility that estoppel might be a potential remedy in future cases.

III. IMPLICATIONS OF THE DECISION

In *Gebhart*, the debtors argued and the Ninth Circuit agreed that the decision will lead to uncertainty as to the status of exempt property, even when the bankruptcy trustee fails to object to a debtor's exemption within the 30-day time period.⁸⁰ In fact, Judge Tashima expressly stated that a "Chapter 7 debtor will not be certain about the status of a homestead property until the case is closed (something that may not happen for several years after bankruptcy filing) or the trustee abandons the property."⁸¹ Consequently, bankruptcy courts may see an increase in debtors seeking orders to compel trustees to abandon property, as that may be their only option to obtain certainty over the status of their exempt property.⁸²

Additionally, since *Gebhart* entitled the bankruptcy trustee to the post-petition increase in value of property that at the time of filing was fully exempt, a bankruptcy trustee may be more prone to keep cases open longer than necessary in the hope of acquiring additional assets for the benefit of creditors. While the Ninth Circuit noted that "[a] trustee has a duty under 11 U.S.C. § 704(a)(1) to administer the case quickly and expeditiously," in *Gebhart* the bankruptcy cases had remained open for two and three years subsequent to the debtors receiving discharge of their debts.⁸³ Thus, as a result of the Ninth Circuit's decision in *Gebhart*,

⁷⁸ *Gebhart*, 621 F.3d at 1212.

⁷⁹ *Id.* ("The following four elements are required in order for estoppel to apply: '(1) The party to be estopped must know the facts; (2) he must intend that his conduct shall be acted on or must so act that the party asserting the estoppel has a right to believe it is so intended; (3) the latter must be ignorant of the true facts; and (4) he must rely on the former's conduct to his injury'" (quoting *Bob's Big Boy Family Rests. v. NLRB*, 625 F.2d 850, 854 (9th Cir. 1980).

⁸⁰ *Id.* at 1211.

⁸¹ *Id.* at 1212.

⁸² A debtor may petition the bankruptcy court to "order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C.A. § 554(b) (Westlaw 2011).

⁸³ *Gebhart*, 621 F.3d at 1212.

2011]

GEBHART v. GAUGHAN

385

abuses by the bankruptcy trustee may be more common as there is now an incentive to keep bankruptcy cases open.

CONCLUSION

Relying primarily on the Supreme Court's decision in *Reilly*, the Ninth Circuit held in *Gebhart* that a Chapter 7 bankruptcy trustee may force a sale of a debtor's homestead property that at the time of the filing was fully exempt, in order to realize equity in the property's increase in value above the debtor's claimed exemptions. It determined that a trustee's failure to object to a debtor's claimed exemption within the 30-day time period prescribed under Rule 4003(b) only removes an "interest" in the property from the bankruptcy estate equivalent to the specific dollar value claimed by the debtor at the time of filing; therefore, the property itself remains in the bankruptcy estate.⁸⁴ As a result of *Gebhart*, debtors will be unclear as to the status of their property until either the trustee abandons the property or the bankruptcy case is closed, which might not occur until several months or even years after the petition is filed. Furthermore, in allowing the trustees to collect the post-petition appreciation value in the debtors' homestead properties, the Ninth Circuit provided bankruptcy trustees an incentive to keep cases open longer than necessary, in hopes of collecting additional money for the creditors.

NATALIE R. BARKER*

⁸⁴ *Id.* at 1210 n.4. The court did not address "instances in which the full value of the property at the time of filing is in fact equal to or less than the monetary limit provided for by the relevant bankruptcy exemption . . . because the debtors here claimed as exempt only their equity interest in their properties . . . , not the full fair market value of their properties." Thus, the court "left open whether such a claim would entitle a debtor to the property itself as opposed to a payment equal to the property's full value." *Id.*

* J.D. Candidate, 2011, Golden Gate University School of Law, San Francisco, California; B.A. Psychology & Social Behavior and Criminology Law & Society, 2005, University of California at Irvine, Irvine, California.